



**6450-01-P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 438**

**RIN 1904-AB98**

**Petroleum Reduction and Alternative Fuel Consumption Requirements for Federal Fleets**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Request for Information.

**SUMMARY:** On March 12, 2012, the Department of Energy (DOE) issued a notice of proposed rulemaking to implement section 142 of the Energy Independence and Security Act of 2007, which amended the Energy Policy and Conservation Act and directed the Secretary of Energy to issue implementing regulations for a statutorily-required reduction in petroleum consumption and increase in alternative fuel consumption for Federal fleets. With this Request for Information (RFI), DOE requests public comment on whether the proposed method for calculating the fiscal year 2005 alternative fuel consumption baseline should include the alternative fuel consumed by exempt vehicles and low-speed electric vehicles.

**DATES:** Public comment on this RFI will be accepted until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by RIN 1904-AB98, by any of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. E-mail: [EISA\\_142\\_Comments@ee.doe.gov](mailto:EISA_142_Comments@ee.doe.gov). Include RIN 1904-AB98 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.
3. Mail: Address written comments to Cyrus Nasser, U.S. Department of Energy, Federal Energy Management Program (EE-2L), 1000 Independence Avenue, SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

This RFI and any comments that DOE receives will be made available on the Federal Energy Management Program's Sustainable Federal Fleets website at [https://federalfleets.energy.gov/federal\\_requirements/notices\\_rules](https://federalfleets.energy.gov/federal_requirements/notices_rules).

**FOR FURTHER INFORMATION CONTACT:** Cyrus Nasser, U.S. Department of Energy, Federal Energy Management Program (EE-2L), 1000 Independence Avenue, SW, Washington,

DC 20585, e-mail: Cyrus.Nasseri@ee.doe.gov; or Michael Jensen, U.S. Department of Energy, Office of the General Counsel (GC-71), 1000 Independence Avenue, SW, Washington, DC 20585, e-mail: Michael.Jensen@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** On March 12, 2012, the Department of Energy (DOE) issued a notice of proposed rulemaking to implement section 142 of the Energy Independence and Security Act of 2007 (EISA, Pub. L. 110-140), which amended the Energy Policy and Conservation Act of 1975 (Pub. L. 94-163) and directed the Secretary of Energy to issue implementing regulations for a statutorily-required reduction in petroleum consumption and increase in alternative fuel consumption for Federal fleets (77 FR 14,482 (Mar. 12, 2012)). For additional background on, and a discussion of the statutory authority for, the proposed rule, please refer to the discussion contained in the **SUPPLEMENTARY INFORMATION** of the proposed rule.

Section 142 of EISA provides that not later than October 1, 2015, and for each year thereafter, Federal fleets “shall achieve at least . . . a 10 percent increase in alternative fuel consumption, as calculated from the baseline established by the Secretary for fiscal year [(FY)] 2005.” Pursuant to section 438.102(b) of the proposed rule, the alternative fuel consumption baseline values would be the same as the values reported for Federal fleets through the Federal Automotive Statistical Tool Web-based reporting system (FAST) for FY 2005. Moreover, section 438.102(b) would require Federal fleets with extremely low alternative fuel use to be subject to a proposed minimum alternative fuel consumption baseline. The minimum baseline would be the greater of (1) the amount of alternative fuel consumed by that Federal fleet in FY

2005, expressed in gallon of gasoline equivalent (GGEs), as reflected in FY 2005 FAST data, or (2) the lesser of (a) five percent of total Federal fleet vehicle fuel (petroleum and alternative fuel) consumption and (b) 500,000 GGEs.

DOE notes that the wording of section 438.102(b) potentially could cause confusion as to whether the alternative fuel consumed by exempt vehicles and low-speed electric vehicles (LSEVs) would be required to be included in the calculation of the FY 2005 baseline. At first glance, the proposed regulatory text specifies how to calculate the FY 2005 baseline for each “Federal fleet.” As defined under section 438.2(l), the term “Federal fleet” as proposed would not include exempt vehicles and certain types of LSEVs; thus, section 438.102(b) would appear to exclude from the calculation of the FY 2005 alternative fuel consumption baseline the amount of alternative fuel consumed by exempt vehicles and LSEVs. This approach potentially would result in a less stringent mandate for increased alternative fuel consumption by allowing each Federal fleet to account for the alternative fuel consumed by two categories of motor vehicles in determining statutory compliance that would not be considered in the calculation of the FY 2005 baseline.<sup>1</sup>

However, section 438.102(b) also provides detailed instruction on how to calculate the FY 2005 baseline with respect to annual “alternative fuel consumption.” As defined under section 438.2(d), the term “alternative fuel consumption” as proposed expressly includes the alternative fuel consumed in exempt vehicles and LSEVs; thus, section 438.102(b) could be interpreted to include the amount of alternative fuel consumed by exempt vehicles and LSEVs in

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<sup>1</sup> Under the proposed rule, DOE would require Federal fleets to include the alternative fuel consumed by exempt vehicles and LSEVs in determining compliance with the statutorily-required increase in alternative fuel consumption.

calculating the FY 2005 alternative fuel consumption baseline. DOE further notes that the **SUPPLEMENTARY INFORMATION** of the proposed rule also suggests that the FY 2005 alternative fuel consumption baseline calculation could include the alternative fuel consumed by exempt vehicles and LSEVs. Specifically, the **SUPPLEMENTARY INFORMATION** provides that “a correction [of the FY 2005 alternative fuel consumption baseline] might be requested in the event that the Federal fleet’s alternative fuel use value for FY 2005 submitted through FAST did not include the electricity used in the Federal fleet’s LSEVs.” Moreover, the alternative fuel consumption baseline data set forth in Table III.1 of the proposed rule includes the alternative fuel consumed by exempt vehicles and LSEVs.

DOE notes that an approach that required the inclusion of alternative fuel consumed by exempt vehicles and LSEVs in the FY 2005 alternative fuel baseline would be consistent with the existing method for baseline calculation under the alternative fuel consumption requirements of Executive Order 13423. Moreover, such an approach could require each Federal fleet to consume greater amounts of alternative fuel to ensure compliance with the statutorily-required increase in alternative fuel consumption as compared to an approach that did not account for the alternative fuel consumed by exempt vehicles and LSEVs in its baseline calculation.

With this Request for Information, DOE requests public comment on whether the FY 2005 alternative fuel consumption baseline should include the alternative fuel consumed by exempt vehicles and LSEVs. DOE also requests comment on other potential approaches to complying with the statutorily-required increase in alternative fuel consumption.

Issued in Washington, DC, on March 20, 2012.

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